proving health, education, and employment in his region that two typed pages won't hold the list.

But his devotion to the Presbyterian Church, as deacon for 23 years, and later as elder, has been the pivot.

This business success itself is proof of the practical wisdom of Christianity, he is convinced.

"There never has been a time that I put public interest above my own that I did not gain," Cummings said. "Dollars should be the byproducts of good service.

"I believe this: We are our brother's keeper."

When the then Vice President Johnson last spring notified all companies with Government contracts that they were to make a survey of practices regarding employment of Negroes, Cummings grabbed the bull by the horn.

He not only made the requested survey and listed all of the methods his company is taking to help train and make employable more Negroes. He banded together 16 business firms—Government contractors, for the most part—to take positive action to give Negroes equal opportunity for employment.

The report was completed November 20, and 2 days later, at the very hour of President Kennedy's assassination, Cummings was in Vice President Johnson's Office, submitting the 30-page report and discussing it with one of Johnson's assistants.

"Johnson became President while I was in his office," Cummings said, glancing at the one portrait in his office: an autographed photograph of President Kennedy.

But Cummings' zeal in providing equal job opportunities for Negroes has stirred the wrath of many conservative Alabamians—Gov. George Wallace in particular.

Cummings is accustomed to political blasts against him on front pages. He thrives on political fights—once even served out an unexpired term in the State legislature.

Part of his value to north Alabama is as liaison man between Huntsville and Washington.

Business takes him to Washinton about once a month, and to "the cape" (Kennedy now, Canaveral before) about once every 3 months. His company has offices at "the cape" as well as at Houston and Huntsville.

He is at much at home in the Senate dining room in Washington (with his good friend, Senator JOHN SPARKMAN, of Huntsville) as he is in the Huntsville Country Club.

His friendship with Senator SPARKMAN is so close that the Senator and his wife and daughter spent the night at the Cummings' stately, white-columned home to hear election returns when SPARKMAN ran for the vice-presidency, with Adlai Stevenson, in 1952.

"Life magazine was there to cover the victory party," Cummings said. "Of course, it never happened."

"Milton likes to work in the background in politics," Mrs. Cummings said. "He loves entertaining friends—politicians, company people—here at home. There is hardly a day that he doesn't bring somebody home to lunch."

One of Huntsville's handsomest antebellum mansions has been the Cummings home for 16 years. They brought up their son and three daughters there.

But now that their children are grown, the Cummings are making another big switch. They will soon move into a bright new one-story home they have built on a 1-acre lot nearby.

Last summer, when Auburn University gave him an honorary Ph. D. degree in recognition of his work for the improvement of the region, two plane loads of Huntsville businessmen flew down for the ceremony, and dozens of others drove there.

Nothing in his career—not even the transformation of Brown Engineering from a $130,000 business in 1958 to a $5,200,000 business today—has made Cummings prouder.

The president's office, the office of the crippled boy who turned down a chance at becoming a doctor so that he could support his parents, has a new title on the door: Dr. M. K. Cummings.

## Federal Jurisdiction for Attack on the President

EXTENSION OF REMARKS

OF

## HON. THADDEUS J. DULSKI

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Thursday, March 5, 1964*

Mr. DULSKI. Mr. Speaker, I am introducing legislation providing for Federal jurisdiction over persons charged with attacks upon the life of the President, Vice President, and successors to the Presidency.

The tragedy of last November 22 has made it clear that our laws need to be tightened to insure uniform prosecution of those charged with attacking the lives of our Chief Executives or their successors.

This proposed legislation has been drafted after long study and consideration in cooperation with Dr. Arthur Lenhoff, professor emeritus of the University of Buffalo, Buffalo, N.Y.

Following is an explanation of the background of my bill:

FEDERAL JURISDICTION FOR ATTACK ON THE PRESIDENT

I. WOULD FEDERAL JURISDICTION OVER MURDEROUS ATTACKS ON THE LIVES OF THE PRESIDENT, PRESIDENT-ELECT, VICE PRESIDENT, AND OFFICERS NEXT IN THE ORDER OF SUCCESSION TO THE PRESIDENTIAL OFFICE, BE EXCLUSIVE OF THE JURISDICTION OF THE STATES?

(a) The first question which comes to one's mind is whether Congress can establish exclusive Federal jurisdiction over such attacks. Such Federal criminal jurisdiction might be territorial. This means that only Federal courts would have jurisdiction where the locus of the offense was in the District of Columbia, Territories or Possessions of the United States, and so forth, under the exclusive authority of U.S. Government. This part of Federal criminal jurisdiction is here not in point.

It cannot be overlooked that Federal criminal jurisdiction has also evolved on a nonterritorial basis. It may be recalled that such jurisdiction emerged where antisocial conduct has concerned fields of Federal administration such as taxation, or of preeminent interest in the safety of the country such as jurisdiction over high treason and sedition. Likewise, protection of the interest in the integrity of the administration have supplied such jurisdictional basis. See, e.g., criminal jurisdiction over bribery of Federal officers or over resistance or obstruction of Federal process.

These illustrations point to misconduct of such a peculiar kind which is not paralleled in the field of the common law. Bribery of Federal officers is not paralleled by a common law crime of officers of a State or its subdivisions.

However, the substantial interest of Federal Government has led to the assumption of Federal jurisdiction over particular misconduct which by itself is also sanctioned by the penal law of the States. The famous decision in *Cunningham* v. *Neagle*, 135 U.S. 1 (1890) illustrates this point. See also the decision *Barrett* v. *U.S.*, 82 F. 2d 528 (C.C.A. 7, 1936) concerning the murder of a special agent of the predecessor of the FBI. The defense made an attack on the constitutionality of the Federal statute establishing the crime, upon the ground that the prosecution of murder falls within the exclusive jurisdiction of the State (of the locus). This attack was rejected with reference to the Supreme Court decision in the *Neagle* case supra.

(b) The tragical events surrounding the assassination of President Kennedy prove that State enforcement of criminal misconduct which by itself constitutes a common law crime is at times insufficient. Such State action might even be frustrated because of territorial limitations on the authority of State officers. In matters properly within the scope of highest national interest, Federal Government should have exclusive authority to legislate, to investigate, and to adjudicate certain criminal conduct.

(c) However, under our Federal system the administration of criminal justice rests principally with the States. See the emphasis laid on this point in *Screws* v. *U.S.*, 325 U.S. 91 (1945) and *Bartkin* v. *Illinois*, 359 U.S. 121 (1959). And see Mr. Justice Black (joined by Justices Reed, Frankfurter, and Douglas) dissenting in *Rutkin* v. *U.S.*, 343 U.S. 130 (1952). He said: "Extortion, robbery, embezzlement, and offenses of that nature are traditionally matters of local concern." He referred to *Jerome* v. *U.S.*, 318 U.S. 101, 105 (1943) where it was said "* * * that those considerations gave additional weight to the view that where Congress is creating offenses which duplicate * * * State law, courts should be reluctant to expand the defined offenses beyond the clear requirements of the terms of the statute."

(d) However, such statements show on the other hand that the fact that the unlawful conduct constitutes a common law crime such as homicide or robbery does not preclude Congress from making it a Federal crime. Sending threatening letters; e.g., a letter containing any threat to take the life of, or to inflict bodily harm upon, the addressee or any other person close to him, constitutes a common law crime. Cf. Clark and Marshall, "A Treatise on the Law of Crimes," 772 (2d ed. 1912). However, Congress felt it necessary to establish such threats against the President of the United States and successors to the Presidency as a special Federal crime. See 18 U.S.C. 871 (as amended by Public Law 87–829, Oct. 15, 1962).

The great bulk of such congressional activity in the field of criminal law rests upon the constitutional power of Congress to enact laws "necessary and proper" in the execution of the powers instrusted to Congress. U.S. Constitution, article II, section I, clause 7. See Schwartz, "Federal Criminal Jurisdiction," etc. 13, "Law and Contemparary Problems", 643 (1948).

(e) Naturaly, as a result State courts have refused to bar a second trial even though there has been a prior trial by Federal courts for the same unsocial conduct, and so have Federal courts acted in the converse situation. See e.g. *Bartkin* v. *Illinois* (1959) supra, and *U.S.* v. *Lanza*, 260 U.S. 377 (1922). This means that the second prosecution by a different Government; e.g., that of a State, does not violate the constitutional prohibition against double jeopardy. See the decisions just cited.

(f) The results derived from the current line of decisions of the U.S. Supreme Court are borne out also by the interpretation of the jurisdictional provisions of the United States Code title 18, "Crimes and Criminal

Procedure." The basis is section 3231 of this code. This section consists of two subsections. The first, originally derived from R.S. section 711 reads:

"Section 3231. District courts: The district courts of the United States shall have original jurisdiction, exclusive of the courts of the States, of all offenses against the laws of the United States."

But this is followed by the second subsection taken from R.S. section 5328 which reads:

"Nothing in this title shall be held to take away or impair the jurisdiction of the courts of the several States under the laws thereof."

In *Sexton* v. *California*, 189 U.S. 319, 324 (1903) the U.S. Supreme Court said:

"Assuming that, but for this section, the State court be without jurisdiction, we are of the opinion that it takes the case out of the provisions of other sections of the R.S. (Revised Statutes) namely * * * section 711 (now the first subsection of 18 U.S.C. 3231), section 5328 (now the second subsection of 18 U.S.C. 3231). (The last mentioned) section 5328 must be construed as creating an exception to the general rule declared in these other sections in regard to the jurisdiction of the Federal courts. The New York Court of Appeals placed the same construction on that section in a very well-reasoned opinion prepared by Andrews Ch. J. in the case of *People* v. *Welch*, 141 N.Y. 266, 277 * * *."

Likewise, in the recent decision *Pennsylvania* v. *Nelson*, 350 U.S. 497, 501, note 10 (1956) the Supreme Court said:

"The office of the second sentence (of 18 U.S.C. sec. 3231) is merely to limit the effect of the jurisdictional grant of the first sentence. There was no intention to resolve particular supersession questions by the section (sec. 3231)."

II. WHY CAN STATE CRIMINAL JURISDICTION BE EXCLUDED?

(a) As mentioned before, the U.S. Supreme Court drew heavily in the Sexton case supra on Chief Judge Andrews' opinion in *People* v. *Welch*, *supra*. This was a case dealing with a State prosecution based on a death resulting from criminal negligence on the part of a pilot operating a ship on the Hudson River. The highest court of New York affirmed the concurring jurisdiction of the State. Said the court (141 N.Y. at 273):

"* * * It is obvious that to exclude the jurisdiction of the State courts over matters within their ordinary jurisdiction, the intention of Congress to exercise this power should be distinctly manifested and that the legislation relied upon to deprive the State courts of jurisdiction should be clear and unambiguous. There can be no presumption that State authority is excluded from the mere fact that Congress has legislated. There must be express words of exclusion, or a manifest repugnancy in the exercise of State authority over the subject."

The court of appeals considered, therefore, the jurisdiction of the New York courts to prosecute and to convict the accused for manslaughter ("N.Y. Penal Law" sec. 1052) as not ousted by the specific provision of the Federal Criminal Code, R.S., section 5344 (18 U.S.C. 1115) [establishing a Federal crime of a pilot to cause by his negligence the loss of a person's life].

(b) Where the field is one of dominant national interest and responsibility and Congress has enacted legislation pursuant to the power delegated to it by the Constitution such as the "necessary and proper" clause—article 1 section VIII, clause 18—it can be argued that thereby State legislation although enacted in a field traditionally within the legislative power of States, is superseded. Traditional has been the view to leave the definition and sanction of local offenses to the States. But is an attempt on the life of the Chief Executive of the Nation as merely local as an attempt on the life of Mr. Smith or Mr. Jones? Is not the national interest in the life of the holder of the Presidential office so dominant that congressional legislation based on this interest must, even in the absence of a specific statement to this effect, be assumed to preclude enforcement of the law of a State dealing with the crime of intentional killing of a human being within its territory? The fact that legislation on homicide falls within a field "traditionally occupied" by the States does not entail the consequence that the State must have concurrent control, but does require that the intent of Congress to exclude such control must clearly be manifested.

See e.g., Mr. Justice Douglas speaking for the U.S. Supreme Court in *Rice* v. *Santa Fe Elevator Co.*, 331 U.S. 218, 230 (1947):

"So we start with the assumption that the historic police powers of the States were not to be superseded by the Federal act unless that was the clear and manifest purpose of Congress. (Citing cases.) Such a purpose may be evidenced in several ways. The scheme of Federal regulation may be so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it. (Citing cases.) Or the act of Congress may touch a field in which the Federal interest is so dominant that the Federal system will be assumed to preclude enforcement of State laws on the same subject. *Hines* v. *Davidowitz*, 312 U.S. 52. Or the State policy may produce a result inconsistent with the objective of the Federal statute. *Hill* v. *Florida*, 325 U.S. 538."

(c) Naturally an examination of the legislative history of the proposed bill to punish murderous attacks on the holder of the Presidential office and persons designated to take such office, might show, that taken as a whole, Congress intended to give Federal authorities and courts an exclusive control over the subject matter so that no room has been left for any action by the States. However, the numerous controversies with which courts had to deal on the question of concurrent criminal jurisdiction of the States show that a positive statement to the effect that the Federal Government has preempted the subject would make such controversies superfluous. Thus, it would be advisable to insert an express provision in the act under consideration that the Federal authority to prosecute and to adjudicate the crime shall be exclusive of any other authority.

III. AT ANY CASE PRIORITY OF FEDERAL PROSECUTION SHOULD BE SECURED

If, against the suggestion, concurrent jurisdiction of the States were not eliminated, some care should be taken that the simultaneous prosecution of the criminal assault in jurisdiction, both Federal and State, should be avoided. For several reasons: Here only a few of such reasons may be mentioned. As the Oswald case shows, State investigation leaves much to be desired from the standpoint of proper, if not due, process of law. Furthermore, the usual practice in turning over a prisoner while he is serving a sentence, e.g., Federal one, to the authorities of the other jurisdiction, e.g., the State, for the purpose of his standing trial there, can, of course, not be followed when death penalty is the punishment. In addition, double prosecution in different jurisdictions is source of procrastination and confusion; for different administrative agencies investigate on the basis of different laws and different standards without a real, mutual assistance and disclosure.

The exclusion, clearly stated in the act, of any other authority than the Federal one, is therefore highly desirable.

However, if this suggestion were not followed, it should at least be provided in the act that upon the request of the attorney for the Federal Government charged with the investigation and prosecution of the crime, a district court may issue an order restraining all authorities of the State in which the crime was committed from prosecuting any investigation or proceeding until further orders of the court. See for a similar restraint in order to protect the priority of Federal proceedings, the provision in 28 U.S.C. 2361.

IV. A FEW CONCLUSIVE REMARKS

The proposed legislation proceeds upon the exclusive jurisdiction of the Federal courts as basis.

The use of 18 U.S.C. 1114, for the subject here under discussion is not advisable. This provision deals with murderous attacks on a judge of the United States, U.S. marshals or other officers "while engaged in the performance of their official duties" or "on account of the performance of such duties." The bill in contemplation should not be restricted to the protection of the incumbent or prospective holder of the highest office against murderous attacks committed upon them while performing their function or because of their functions. The lives of the President, Vice President, or the officers next in succession to the Presidential office should be protected, regardless of time and place of their functions. To illustrate, an attack upon the President while taking a weekend rest calls for no less a sanction than an attack made upon him in the White House or at an official reception.

Threats against the President, Vice President, etc., to take the life or to inflict bodily harm are already sanctioned in 18 U.S.C. 871.

## Increase in Use of Coal

EXTENSION OF REMARKS
OF
## HON. JOHN H. DENT
OF PENNSYLVANIA
IN THE HOUSE OF REPRESENTATIVES

*Thursday, March 5, 1964*

Mr. DENT. Mr. Speaker, an announcement by Mr. Jackson Busby, president, Pennsylvania Power & Light Co., which follows holds out hope for my district and western Pennsylvania for a great increase in the use of coal, as well as a boost in our efforts to rehabilitate our industrial capacity.

The program demonstrates the faith of these companies in the people and the institutions in the great State of Pennsylvania.

We look forward to better days:

STATEMENT BY JACK BUSBY

Ebasco Services, Inc., has been awarded the construction management contract for the gigantic Keystone generating station, it was announced today by Mr. Jack K. Busby, president, Pennsylvania Power & Light Co. The local utility and three other investor-owned electric utilities are building the 1.8-million-kilowatt powerplant in the western Pennsylvania coalfields near Indiana, Pa. Construction work will start this spring, and the plant will become operational in 1967.

"Ebasco has extensive experience in the construction of thermal, hydro, and nuclear powerplants and has worked in all parts of the United States and in 60 other countries," said Mr. Busby. "Since its founding in 1905, Ebasco has held contracts for plants representing 37.5 million kilowatts of generating capacity."

The new Keystone station, which will consist of two 900,000-kilowatt generating units, will be owned jointly by P.P. & L., Philadelphia Electric Co., Jersey Central Power & Light Co. and Baltimore Gas & Electric Co.